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June 10, 1998

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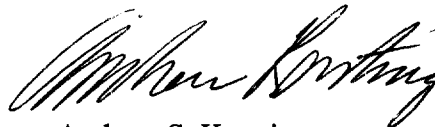
Re: Advanced Television Systems and Their Impact  
Upon the Existing Television Broadcast Service  
MM Docket No. 87-268

Dear Ms. Salas:

Transmitted herewith on behalf of Fant Broadcast Development, L.L.C., are an original and 11 copies of its "Reply to Partial Opposition to Petition for Reconsideration," which is being filed in connection with the Commission's *Report and Order* in MM Docket No. 87-268, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, FCC 98-24 (released February 23, 1998), in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,



Andrew S. Kersting  
Counsel for  
Fant Broadcast Development, L.L.C.

Enclosures

cc (w/ encl.): Certificate of Service (by hand & first-class mail)

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BEFORE THE

**Federal Communications Commission**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact Upon the Existing ) MM Docket No. 87-268  
Television Broadcast Service )  
  
To: The Commission

**REPLY TO PARTIAL OPPOSITION TO  
PETITION FOR RECONSIDERATION**

Fant Broadcast Development, L.L.C. ("Fant"), by its counsel, hereby replies to the "Opposition to Petition for Reconsideration," filed May 26, 1998 ("Partial Opposition"), in the above-captioned proceeding by Civic License Holding Company, Inc. ("Civic").<sup>1</sup> In reply, the following is stated:

In its Partial Opposition, Civic claims that Fant's proposal to substitute DTV Channel 53 for the DTV Channel 51 allotment at Jackson is unacceptable because Channel 53 is outside the established "core spectrum."<sup>2</sup> As a result, Civic contends that it would be forced to relocate to a channel within the core spectrum at the end of the transition period, and that this subsequent change in its DTV channel would result in additional equipment expenditures and viewer confusion. Partial Opposition, p. 2.

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<sup>1</sup> Civic is the licensee of Station WLBT(TV), Jackson, Mississippi, which has been allotted DTV Channel 51 in this proceeding. See *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* in MM Docket No. 87-268, FCC 98-24 (released February 23, 1998) ("MO&O"), Appendix B-26.

<sup>2</sup> As Civic notes, the Commission has established a DTV "core spectrum" which consists of channels 2-51. See *MO&O* at ¶42.

However, Civic does not oppose Fant's alternative proposal of substituting an alternative NTSC channel at Jackson. Indeed, Civic expressly states:

. . . Fant proposes in its Petition that it could operate a new NTSC station in Jackson on any of three alternate channels, without causing interference to any DTV facility. Should the Commission elect to allow Fant to amend its pending application to specify operation on one of those vacant allotments, Civic would have no objection.

Partial Opposition, pp. 2-3. Therefore, even assuming, *arguendo*, that the Commission were to reject Fant's request to change the DTV allotment for Station WLBT, Civic has consented to Fant's alternative proposal to permit the mutually exclusive applicants for the NTSC Channel 51 facility at Jackson to amend their respective pending applications to specify operation on either Channel 53, 57, or 59, in lieu of Channel 51. As shown in the engineering materials attached to Fant's Petition for Reconsideration ("Petition"),<sup>3</sup> the substitution of one of the available alternative NTSC channels for the existing Channel 51 allotment at Jackson would not cause interference to any other DTV facility.

The Commission has stated throughout this proceeding that it intends to give broadcasters the flexibility to develop alternative allotment plans where they do not result in additional interference to other stations and/or allotments:

[W]e will make changes to the DTV Table where such changes have the agreement of all affected broadcasters or do not result in additional interference to other stations or allotments, and do not conflict with our other DTV allotment goals . . . .

*MO&O* at ¶187. Therefore, because Civic has consented to Fant's alternative proposal, and that proposal will not result in additional interference to other stations and/or allotments, or otherwise

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<sup>3</sup> Fant filed a Petition for Reconsideration of the Commission's *MO&O* on April 20, 1998. Fant subsequently filed a "Corrected Petition for Reconsideration" on May 7, 1998, in order to delete certain factual material which was inadvertently included in its earlier filing. The corrected version is intended to replace Fant's original Petition and be considered in lieu thereof.

conflict with the Commission's DTV allotment goals, the Commission should direct the pending applicants for the NTSC Channel 51 facility at Jackson ("Jackson Applicants") to amend their respective applications to specify operation on either Channel 53, 57, or 59, in lieu of Channel 51.

The pending settlement proposal among the mutually exclusive Jackson Applicants provides an independent basis for the grant of Fant's Petition.<sup>4</sup> In the Balanced Budget Act of 1997,<sup>5</sup> Congress directed the Commission to waive its rules to the extent necessary to permit parties to resolve conflicts between their pending applications during the statutory settlement period.<sup>6</sup> In accordance with the statutory settlement period provided in the Budget Act, the Jackson Applicants resolved the conflict between their mutually exclusive applications for the Channel 51 facility at Jackson by entering into a global settlement.

In this case, the Commission is not required to "waive" any provisions of its rules in order to further the Congressional intent of promoting the initiation of new broadcast service to the public. Instead, the Commission must merely direct the Jackson Applicants to amend their respective

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<sup>4</sup> As indicated in Fant's original Petition, filed April 20, 1998, the eight mutually exclusive applicants filed a "Joint Request for Approval of Universal Settlement" on January 30, 1998, proposing the grant of the application of George S. Flinn, Jr. ("Flinn"). See Petition, p. 2. Flinn's application was subsequently amended on February 13, 1998, to substitute Paxson Communications Corporation as the applicant for Channel 51 at Jackson. See File No. BPCT-961001UV.

<sup>5</sup> Pub. L. No. 105-33, 111 Stat. 251 (1997).


<sup>6</sup> See 47 U.S.C. §309(l). Section 309(l) was added to the Communications Act of 1934, as amended, by Section 3002(a)(3) of the Balanced Budget Act. Section 309(l) directs the Commission to "waive *any* provisions of its regulations necessary" to permit mutually exclusive broadcast applicants to enter into an agreement to procure the removal of a conflict between their respective applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act (emphasis added). The Budget Act was signed into law on August 5, 1997, and, thus, the 180-day period continued through February 1, 1998.

pending NTSC applications to specify operation on one of the available alternative NTSC channels. Directing the Jackson Applicants to amend their pending NTSC applications in this manner and precluding additional applicants from having an opportunity to file for this facility is entirely consistent with Congress' directive to "waive *any* provisions of its regulations necessary" to permit mutually exclusive broadcast applicants to enter into agreements to procure the removal of conflicts between their respective applications during the 180-day statutory settlement period. *See* 47 U.S.C. §309(l). This procedure also is consistent with the Commission's *Report and Order* in ET Docket No. 97-157, *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, 12 FCC Rcd 22953 (1998), in which the Commission announced that, with respect to pending applications and rulemaking petitions involving Channels 60-69, the Commission will provide applications and rulemaking petitioners with an opportunity to amend their respective applications and petitions, if possible, to seek a channel below Channel 60. *Id.* at ¶40. In implementing this procedure, the Commission will not permit additional applicants to file for available channels which are not the subject of a rulemaking petition. Therefore, assuming, *arguendo*, the Commission should reject Fant's proposal to change the DTV allotment at Jackson from Channel 51 to Channel 53, the Commission should direct the Jackson Applicants to amend their respective pending NTSC applications to specify operation on one of the available alternative NTSC channels. As demonstrated in Fant's Petition, the grant of Fant's alternative proposal will provide substantial public interest benefits, including promoting the emergence and development of new networks.

WHEREFORE, in light of the foregoing, Fant Broadcast Development, L.L.C. respectfully requests that the Commission GRANT reconsideration of its *MO&O* to the extent indicated herein by substituting DTV Channel 53 for Channel 51 at Jackson, Mississippi, or, alternatively, directing the Jackson Applicants to amend their respective pending NTSC applications to specify operation on either Channel 53, 57 or 59 at Jackson, Mississippi, in lieu of Channel 51.

Respectfully submitted,

FANT BROADCAST DEVELOPMENT, L.L.C.

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June 10, 1998

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### **CERTIFICATE OF SERVICE**

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 10th day of June, 1998, copies of the foregoing "Reply to Partial Opposition to Petition for Reconsideration" were hand delivered or mailed first-class, postage pre-paid, to the following:

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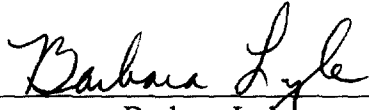
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